



Judiciary II - Criminal Law Committee

**Filed: 3/22/2007**

09500HB1831ham001

LRB095 09795 RLC 34295 a

1 AMENDMENT TO HOUSE BILL 1831

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1831 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Identification Act is amended by  
5 changing Section 5 and by adding Section 6 as follows:

6 (20 ILCS 2630/5) (from Ch. 38, par. 206-5)

7 Sec. 5. Arrest reports, ~~expungement~~.

8 ~~(a)~~ All policing bodies of this State shall furnish to the  
9 Department, daily, in the form and detail the Department  
10 requires, fingerprints and descriptions of all persons who are  
11 arrested on charges of violating any penal statute of this  
12 State for offenses that are classified as felonies and Class A  
13 or B misdemeanors and of all minors of the age of 10 and over  
14 who have been arrested for an offense which would be a felony  
15 if committed by an adult, and may forward such fingerprints and  
16 descriptions for minors arrested for Class A or B misdemeanors.

1 Moving or nonmoving traffic violations under the Illinois  
2 Vehicle Code shall not be reported except for violations of  
3 Chapter 4, Section 11-204.1, or Section 11-501 of that Code. In  
4 addition, conservation offenses, as defined in the Supreme  
5 Court Rule 501(c), that are classified as Class B misdemeanors  
6 shall not be reported.

7 ~~Whenever an adult or minor prosecuted as an adult, not~~  
8 ~~having previously been convicted of any criminal offense or~~  
9 ~~municipal ordinance violation, charged with a violation of a~~  
10 ~~municipal ordinance or a felony or misdemeanor, is acquitted or~~  
11 ~~released without being convicted, whether the acquittal or~~  
12 ~~release occurred before, on, or after the effective date of~~  
13 ~~this amendatory Act of 1991, the Chief Judge of the circuit~~  
14 ~~wherein the charge was brought, any judge of that circuit~~  
15 ~~designated by the Chief Judge, or in counties of less than~~  
16 ~~3,000,000 inhabitants, the presiding trial judge at the~~  
17 ~~defendant's trial may upon verified petition of the defendant~~  
18 ~~order the record of arrest expunged from the official records~~  
19 ~~of the arresting authority and the Department and order that~~  
20 ~~the records of the clerk of the circuit court be sealed until~~  
21 ~~further order of the court upon good cause shown and the name~~  
22 ~~of the defendant obliterated on the official index required to~~  
23 ~~be kept by the circuit court clerk under Section 16 of the~~  
24 ~~Clerks of Courts Act, but the order shall not affect any index~~  
25 ~~issued by the circuit court clerk before the entry of the~~  
26 ~~order. The Department may charge the petitioner a fee~~

1 ~~equivalent to the cost of processing any order to expunge or~~  
2 ~~seal the records, and the fee shall be deposited into the State~~  
3 ~~Police Services Fund. The records of those arrests, however,~~  
4 ~~that result in a disposition of supervision for any offense~~  
5 ~~shall not be expunged from the records of the arresting~~  
6 ~~authority or the Department nor impounded by the court until 2~~  
7 ~~years after discharge and dismissal of supervision. Those~~  
8 ~~records that result from a supervision for a violation of~~  
9 ~~Section 3-707, 3-708, 3-710, 5-401.3, or 11-503 of the Illinois~~  
10 ~~Vehicle Code or a similar provision of a local ordinance, or~~  
11 ~~for a violation of Section 12-3.2, 12-15 or 16A-3 of the~~  
12 ~~Criminal Code of 1961, or probation under Section 10 of the~~  
13 ~~Cannabis Control Act, Section 410 of the Illinois Controlled~~  
14 ~~Substances Act, Section 70 of the Methamphetamine Control and~~  
15 ~~Community Protection Act, Section 12-4.3(b)(1) and (2) of the~~  
16 ~~Criminal Code of 1961 (as those provisions existed before their~~  
17 ~~deletion by Public Act 89-313), Section 10-102 of the Illinois~~  
18 ~~Alcoholism and Other Drug Dependency Act when the judgment of~~  
19 ~~conviction has been vacated, Section 40-10 of the Alcoholism~~  
20 ~~and Other Drug Abuse and Dependency Act when the judgment of~~  
21 ~~conviction has been vacated, or Section 10 of the Steroid~~  
22 ~~Control Act shall not be expunged from the records of the~~  
23 ~~arresting authority nor impounded by the court until 5 years~~  
24 ~~after termination of probation or supervision. Those records~~  
25 ~~that result from a supervision for a violation of Section~~  
26 ~~11-501 of the Illinois Vehicle Code or a similar provision of a~~

1 ~~local ordinance, shall not be expunged. All records set out~~  
2 ~~above may be ordered by the court to be expunged from the~~  
3 ~~records of the arresting authority and impounded by the court~~  
4 ~~after 5 years, but shall not be expunged by the Department, but~~  
5 ~~shall, on court order be sealed by the Department and may be~~  
6 ~~disseminated by the Department only as required by law or to~~  
7 ~~the arresting authority, the State's Attorney, and the court~~  
8 ~~upon a later arrest for the same or a similar offense or for~~  
9 ~~the purpose of sentencing for any subsequent felony. Upon~~  
10 ~~conviction for any offense, the Department of Corrections shall~~  
11 ~~have access to all sealed records of the Department pertaining~~  
12 ~~to that individual.~~

13 ~~(a-5) Those records maintained by the Department for~~  
14 ~~persons arrested prior to their 17th birthday shall be expunged~~  
15 ~~as provided in Section 5-915 of the Juvenile Court Act of 1987.~~

16 ~~(b) Whenever a person has been convicted of a crime or of~~  
17 ~~the violation of a municipal ordinance, in the name of a person~~  
18 ~~whose identity he has stolen or otherwise come into possession~~  
19 ~~of, the aggrieved person from whom the identity was stolen or~~  
20 ~~otherwise obtained without authorization, upon learning of the~~  
21 ~~person having been arrested using his identity, may, upon~~  
22 ~~verified petition to the chief judge of the circuit wherein the~~  
23 ~~arrest was made, have a court order entered nunc pro tunc by~~  
24 ~~the chief judge to correct the arrest record, conviction~~  
25 ~~record, if any, and all official records of the arresting~~  
26 ~~authority, the Department, other criminal justice agencies,~~

1 ~~the prosecutor, and the trial court concerning such arrest, if~~  
2 ~~any, by removing his name from all such records in connection~~  
3 ~~with the arrest and conviction, if any, and by inserting in the~~  
4 ~~records the name of the offender, if known or ascertainable, in~~  
5 ~~lieu of the aggrieved's name. The records of the clerk of the~~  
6 ~~circuit court clerk shall be sealed until further order of the~~  
7 ~~court upon good cause shown and the name of the aggrieved~~  
8 ~~person obliterated on the official index required to be kept by~~  
9 ~~the circuit court clerk under Section 16 of the Clerks of~~  
10 ~~Courts Act, but the order shall not affect any index issued by~~  
11 ~~the circuit court clerk before the entry of the order. Nothing~~  
12 ~~in this Section shall limit the Department of State Police or~~  
13 ~~other criminal justice agencies or prosecutors from listing~~  
14 ~~under an offender's name the false names he or she has used.~~  
15 ~~For purposes of this Section, convictions for moving and~~  
16 ~~nonmoving traffic violations other than convictions for~~  
17 ~~violations of Chapter 4, Section 11 204.1 or Section 11 501 of~~  
18 ~~the Illinois Vehicle Code shall not be a bar to expunging the~~  
19 ~~record of arrest and court records for violation of a~~  
20 ~~misdemeanor or municipal ordinance.~~

21 ~~(c) Whenever a person who has been convicted of an offense~~  
22 ~~is granted a pardon by the Governor which specifically~~  
23 ~~authorizes expungement, he may, upon verified petition to the~~  
24 ~~chief judge of the circuit where the person had been convicted,~~  
25 ~~any judge of the circuit designated by the Chief Judge, or in~~  
26 ~~counties of less than 3,000,000 inhabitants, the presiding~~

1 ~~trial judge at the defendant's trial, may have a court order~~  
2 ~~entered expunging the record of arrest from the official~~  
3 ~~records of the arresting authority and order that the records~~  
4 ~~of the clerk of the circuit court and the Department be sealed~~  
5 ~~until further order of the court upon good cause shown or as~~  
6 ~~otherwise provided herein, and the name of the defendant~~  
7 ~~obliterated from the official index requested to be kept by the~~  
8 ~~circuit court clerk under Section 16 of the Clerks of Courts~~  
9 ~~Act in connection with the arrest and conviction for the~~  
10 ~~offense for which he had been pardoned but the order shall not~~  
11 ~~affect any index issued by the circuit court clerk before the~~  
12 ~~entry of the order. All records sealed by the Department may be~~  
13 ~~disseminated by the Department only as required by law or to~~  
14 ~~the arresting authority, the State's Attorney, and the court~~  
15 ~~upon a later arrest for the same or similar offense or for the~~  
16 ~~purpose of sentencing for any subsequent felony. Upon~~  
17 ~~conviction for any subsequent offense, the Department of~~  
18 ~~Corrections shall have access to all sealed records of the~~  
19 ~~Department pertaining to that individual. Upon entry of the~~  
20 ~~order of expungement, the clerk of the circuit court shall~~  
21 ~~promptly mail a copy of the order to the person who was~~  
22 ~~pardoned.~~

23 ~~(c-5) Whenever a person has been convicted of criminal~~  
24 ~~sexual assault, aggravated criminal sexual assault, predatory~~  
25 ~~criminal sexual assault of a child, criminal sexual abuse, or~~  
26 ~~aggravated criminal sexual abuse, the victim of that offense~~

1 ~~may request that the State's Attorney of the county in which~~  
2 ~~the conviction occurred file a verified petition with the~~  
3 ~~presiding trial judge at the defendant's trial to have a court~~  
4 ~~order entered to seal the records of the clerk of the circuit~~  
5 ~~court in connection with the proceedings of the trial court~~  
6 ~~concerning that offense. However, the records of the arresting~~  
7 ~~authority and the Department of State Police concerning the~~  
8 ~~offense shall not be sealed. The court, upon good cause shown,~~  
9 ~~shall make the records of the clerk of the circuit court in~~  
10 ~~connection with the proceedings of the trial court concerning~~  
11 ~~the offense available for public inspection.~~

12 ~~(c-6) If a conviction has been set aside on direct review~~  
13 ~~or on collateral attack and the court determines by clear and~~  
14 ~~convincing evidence that the defendant was factually innocent~~  
15 ~~of the charge, the court shall enter an expungement order as~~  
16 ~~provided in subsection (b) of Section 5-5-4 of the Unified Code~~  
17 ~~of Corrections.~~

18 ~~(d) Notice of the petition for subsections (a), (b), and~~  
19 ~~(c) shall be served upon the State's Attorney or prosecutor~~  
20 ~~charged with the duty of prosecuting the offense, the~~  
21 ~~Department of State Police, the arresting agency and the chief~~  
22 ~~legal officer of the unit of local government affecting the~~  
23 ~~arrest. Unless the State's Attorney or prosecutor, the~~  
24 ~~Department of State Police, the arresting agency or such chief~~  
25 ~~legal officer objects to the petition within 30 days from the~~  
26 ~~date of the notice, the court shall enter an order granting or~~

1 ~~denying the petition. The clerk of the court shall promptly~~  
2 ~~mail a copy of the order to the person, the arresting agency,~~  
3 ~~the prosecutor, the Department of State Police and such other~~  
4 ~~criminal justice agencies as may be ordered by the judge.~~

5 ~~(c) Nothing herein shall prevent the Department of State~~  
6 ~~Police from maintaining all records of any person who is~~  
7 ~~admitted to probation upon terms and conditions and who~~  
8 ~~fulfills those terms and conditions pursuant to Section 10 of~~  
9 ~~the Cannabis Control Act, Section 410 of the Illinois~~  
10 ~~Controlled Substances Act, Section 70 of the Methamphetamine~~  
11 ~~Control and Community Protection Act, Section 12-4.3 of the~~  
12 ~~Criminal Code of 1961, Section 10-102 of the Illinois~~  
13 ~~Alcoholism and Other Drug Dependency Act, Section 40-10 of the~~  
14 ~~Alcoholism and Other Drug Abuse and Dependency Act, or Section~~  
15 ~~10 of the Steroid Control Act.~~

16 ~~(f) No court order issued under the expungement provisions~~  
17 ~~of this Section shall become final for purposes of appeal until~~  
18 ~~30 days after notice is received by the Department. Any court~~  
19 ~~order contrary to the provisions of this Section is void.~~

20 ~~(g) Except as otherwise provided in subsection (c-5) of~~  
21 ~~this Section, the court shall not order the sealing or~~  
22 ~~expungement of the arrest records and records of the circuit~~  
23 ~~court clerk of any person granted supervision for or convicted~~  
24 ~~of any sexual offense committed against a minor under 18 years~~  
25 ~~of age. For the purposes of this Section, "sexual offense~~  
26 ~~committed against a minor" includes but is not limited to the~~

1 ~~offenses of indecent solicitation of a child or criminal sexual~~  
2 ~~abuse when the victim of such offense is under 18 years of age.~~

3 ~~(h) (1) Applicability. Notwithstanding any other provision~~  
4 ~~of this Act to the contrary and cumulative with any rights to~~  
5 ~~expungement of criminal records, this subsection authorizes~~  
6 ~~the sealing of criminal records of adults and of minors~~  
7 ~~prosecuted as adults.~~

8 ~~(2) Sealable offenses. The following offenses may be~~  
9 ~~sealed:~~

10 ~~(A) All municipal ordinance violations and~~  
11 ~~misdemeanors, with the exception of the following:~~

12 ~~(i) violations of Section 11-501 of the Illinois~~  
13 ~~Vehicle Code or a similar provision of a local~~  
14 ~~ordinance;~~

15 ~~(ii) violations of Article 11 of the Criminal Code~~  
16 ~~of 1961 or a similar provision of a local ordinance,~~  
17 ~~except Section 11-14 of the Criminal Code of 1961 as~~  
18 ~~provided in clause B(i) of this subsection (h);~~

19 ~~(iii) violations of Section 12-15, 12-30, or 26-5~~  
20 ~~of the Criminal Code of 1961 or a similar provision of~~  
21 ~~a local ordinance;~~

22 ~~(iv) violations that are a crime of violence as~~  
23 ~~defined in Section 2 of the Crime Victims Compensation~~  
24 ~~Act or a similar provision of a local ordinance;~~

25 ~~(v) Class A misdemeanor violations of the Humane~~  
26 ~~Care for Animals Act; and~~

1 ~~(vi) any offense or attempted offense that would~~  
2 ~~subject a person to registration under the Sex Offender~~  
3 ~~Registration Act.~~

4 ~~(B) Misdemeanor and Class 4 felony violations of:~~

5 ~~(i) Section 11-14 of the Criminal Code of 1961;~~

6 ~~(ii) Section 4 of the Cannabis Control Act;~~

7 ~~(iii) Section 402 of the Illinois Controlled~~  
8 ~~Substances Act; and~~

9 ~~(iv) Section 60 of the Methamphetamine Control and~~  
10 ~~Community Protection Act.~~

11 ~~However, for purposes of this subsection (h), a~~  
12 ~~sentence of first offender probation under Section 10 of~~  
13 ~~the Cannabis Control Act, Section 410 of the Illinois~~  
14 ~~Controlled Substances Act, or Section 70 of the~~  
15 ~~Methamphetamine Control and Community Protection Act shall~~  
16 ~~be treated as a Class 4 felony conviction.~~

17 ~~(3) Requirements for sealing. Records identified as~~  
18 ~~sealable under clause (h) (2) may be sealed when the individual~~  
19 ~~was:~~

20 ~~(A) Acquitted of the offense or offenses or released~~  
21 ~~without being convicted.~~

22 ~~(B) Convicted of the offense or offenses and the~~  
23 ~~conviction or convictions were reversed.~~

24 ~~(C) Placed on misdemeanor supervision for an offense or~~  
25 ~~offenses; and~~

26 ~~(i) at least 3 years have elapsed since the~~

1 ~~completion of the term of supervision, or terms of~~  
2 ~~supervision, if more than one term has been ordered;~~  
3 ~~and~~

4 ~~(ii) the individual has not been convicted of a~~  
5 ~~felony or misdemeanor or placed on supervision for a~~  
6 ~~misdemeanor or felony during the period specified in~~  
7 ~~clause (i).~~

8 ~~(D) Convicted of an offense or offenses; and~~

9 ~~(i) at least 4 years have elapsed since the last~~  
10 ~~such conviction or term of any sentence, probation,~~  
11 ~~parole, or supervision, if any, whichever is last in~~  
12 ~~time; and~~

13 ~~(ii) the individual has not been convicted of a~~  
14 ~~felony or misdemeanor or placed on supervision for a~~  
15 ~~misdemeanor or felony during the period specified in~~  
16 ~~clause (i).~~

17 ~~(4) Requirements for sealing of records when more than one~~  
18 ~~charge and disposition have been filed. When multiple offenses~~  
19 ~~are petitioned to be sealed under this subsection (h), the~~  
20 ~~requirements of the relevant provisions of clauses (h) (3) (A)~~  
21 ~~through (D) each apply. In instances in which more than one~~  
22 ~~waiting period is applicable under clauses (h) (C) (i) and (ii)~~  
23 ~~and (h) (D) (i) and (ii), the longer applicable period applies,~~  
24 ~~and the requirements of clause (h) (3) shall be considered met~~  
25 ~~when the petition is filed after the passage of the longer~~  
26 ~~applicable waiting period. That period commences on the date of~~

1 ~~the completion of the last sentence or the end of supervision,~~  
2 ~~probation, or parole, whichever is last in time.~~

3 ~~(5) Subsequent convictions. A person may not have~~  
4 ~~subsequent felony conviction records sealed as provided in this~~  
5 ~~subsection (h) if he or she is convicted of any felony offense~~  
6 ~~after the date of the sealing of prior felony records as~~  
7 ~~provided in this subsection (h).~~

8 ~~(6) Notice of eligibility for sealing. Upon acquittal,~~  
9 ~~release without conviction, or being placed on supervision for~~  
10 ~~a sealable offense, or upon conviction of a sealable offense,~~  
11 ~~the person shall be informed by the court of the right to have~~  
12 ~~the records sealed and the procedures for the sealing of the~~  
13 ~~records.~~

14 ~~(7) Procedure. Upon becoming eligible for the sealing of~~  
15 ~~records under this subsection (h), the person who seeks the~~  
16 ~~sealing of his or her records shall file a petition requesting~~  
17 ~~the sealing of records with the clerk of the court where the~~  
18 ~~charge or charges were brought. The records may be sealed by~~  
19 ~~the Chief Judge of the circuit wherein the charge was brought,~~  
20 ~~any judge of that circuit designated by the Chief Judge, or in~~  
21 ~~counties of less than 3,000,000 inhabitants, the presiding~~  
22 ~~trial judge at the defendant's trial, if any. If charges were~~  
23 ~~brought in multiple jurisdictions, a petition must be filed in~~  
24 ~~each such jurisdiction. The petitioner shall pay the applicable~~  
25 ~~fee, if not waived.~~

26 ~~(A) Contents of petition. The petition shall contain~~

1 ~~the petitioner's name, date of birth, current address, each~~  
2 ~~charge, each case number, the date of each charge, the~~  
3 ~~identity of the arresting authority, and such other~~  
4 ~~information as the court may require. During the pendency~~  
5 ~~of the proceeding, the petitioner shall promptly notify the~~  
6 ~~clerk of the court of any change of address.~~

7 ~~(B) Drug test. A person filing a petition to have his~~  
8 ~~or her records sealed for a Class 4 felony violation of~~  
9 ~~Section 4 of the Cannabis Control Act or for a Class 4~~  
10 ~~felony violation of Section 402 of the Illinois Controlled~~  
11 ~~Substances Act must attach to the petition proof that the~~  
12 ~~petitioner has passed a test taken within the previous 30~~  
13 ~~days before the filing of the petition showing the absence~~  
14 ~~within his or her body of all illegal substances in~~  
15 ~~violation of either the Illinois Controlled Substances Act~~  
16 ~~or the Cannabis Control Act.~~

17 ~~(C) Service of petition. The clerk shall promptly serve~~  
18 ~~a copy of the petition on the State's Attorney or~~  
19 ~~prosecutor charged with the duty of prosecuting the~~  
20 ~~offense, the Department of State Police, the arresting~~  
21 ~~agency and the chief legal officer of the unit of local~~  
22 ~~government effecting the arrest.~~

23 ~~(D) Entry of order. Unless the State's Attorney or~~  
24 ~~prosecutor, the Department of State Police, the arresting~~  
25 ~~agency or such chief legal officer objects to sealing of~~  
26 ~~the records within 90 days of notice the court shall enter~~

1 ~~an order sealing the defendant's records.~~

2 ~~(E) Hearing upon objection. If an objection is filed,~~  
3 ~~the court shall set a date for a hearing and notify the~~  
4 ~~petitioner and the parties on whom the petition had been~~  
5 ~~served, and shall hear evidence on whether the sealing of~~  
6 ~~the records should or should not be granted, and shall make~~  
7 ~~a determination on whether to issue an order to seal the~~  
8 ~~records based on the evidence presented at the hearing.~~

9 ~~(F) Service of order. After entering the order to seal~~  
10 ~~records, the court must provide copies of the order to the~~  
11 ~~Department, in a form and manner prescribed by the~~  
12 ~~Department, to the petitioner, to the State's Attorney or~~  
13 ~~prosecutor charged with the duty of prosecuting the~~  
14 ~~offense, to the arresting agency, to the chief legal~~  
15 ~~officer of the unit of local government effecting the~~  
16 ~~arrest, and to such other criminal justice agencies as may~~  
17 ~~be ordered by the court.~~

18 ~~(8) Fees. Notwithstanding any provision of the Clerk of the~~  
19 ~~Courts Act to the contrary, and subject to the approval of the~~  
20 ~~county board, the clerk may charge a fee equivalent to the cost~~  
21 ~~associated with the sealing of records by the clerk and the~~  
22 ~~Department of State Police. The clerk shall forward the~~  
23 ~~Department of State Police portion of the fee to the Department~~  
24 ~~and it shall be deposited into the State Police Services Fund.~~

25 ~~(i) Subject to available funding, the Illinois Department~~  
26 ~~of Corrections shall conduct a study of the impact of sealing,~~

1 ~~especially on employment and recidivism rates, utilizing a~~  
2 ~~random sample of those who apply for the sealing of their~~  
3 ~~criminal records under Public Act 93-211, in accordance to~~  
4 ~~rules adopted by the Department. At the request of the Illinois~~  
5 ~~Department of Corrections, records of the Illinois Department~~  
6 ~~of Employment Security shall be utilized as appropriate to~~  
7 ~~assist in the study. The study shall not disclose any data in a~~  
8 ~~manner that would allow the identification of any particular~~  
9 ~~individual or employing unit. The study shall be made available~~  
10 ~~to the General Assembly no later than September 1, 2006.~~

11 (Source: P.A. 93-210, eff. 7-18-03; 93-211, eff. 1-1-04;  
12 93-1084, eff. 6-1-05; 94-556, eff. 9-11-05.)

13 (20 ILCS 2630/6 new)

14 Sec. 6. Expungement and sealing.

15 (a) General provisions.

16 (1) Definitions. In this Act, words and phrases have  
17 the meanings set forth in this Section, except when a  
18 particular context clearly requires a different meaning.

19 "Conviction" means a finding of guilt resulting in  
20 the entry of a judgment of conviction. A sentence of  
21 supervision successfully completed by the petitioner  
22 is not a conviction. A sentence of qualified probation  
23 successfully completed by the petitioner is not a  
24 conviction. A sentence of supervision or a sentence of  
25 qualified probation that is terminated

1           unsatisfactorily is a conviction.

2           "Expunge" means to physically destroy the records  
3           or return them to the petitioner and to obliterate the  
4           petitioner's name from any official index or public  
5           record, or both.

6           "Last sentence" means the sentence, including a  
7           sentence of supervision or qualified probation, for a  
8           municipal ordinance violation, misdemeanor (except  
9           Class C misdemeanors as set forth in clause (a)(2)), or  
10           felony that terminates last in time in any  
11           jurisdiction, regardless of whether the petitioner has  
12           included the municipal ordinance violation,  
13           misdemeanor, or felony for which the sentence was  
14           imposed in his or her petition or petitions. If  
15           multiple sentences for municipal ordinance violations,  
16           misdemeanors, or felonies terminate on the same day and  
17           are last in time, they shall be collectively considered  
18           the "last sentence" regardless of whether the  
19           sentences were ordered to run concurrently.

20           "Petitioner" means an adult or a minor prosecuted  
21           as an adult.

22           "Qualified probation" means a sentence of  
23           probation under Section 10 of the Cannabis Control Act,  
24           Section 410 of the Illinois Controlled Substances Act,  
25           Section 70 of the Methamphetamine Control and  
26           Community Protection Act, Section 12-4.3(b)(1) and (2)

1           of the Criminal Code of 1961 (as those provisions  
2           existed before their deletion by Public Act 89-313),  
3           Section 10-102 of the Illinois Alcoholism and Other  
4           Drug Dependency Act, Section 40-10 of the Alcoholism  
5           and Other Drug Abuse and Dependency Act, or Section 10  
6           of the Steroid Control Act. For the purpose of this  
7           Act, "successful completion" of a sentence of  
8           qualified probation under Section 10-102 of the  
9           Illinois Alcoholism and Other Drug Dependency Act and  
10           Section 40-10 of the Alcoholism and Other Drug Abuse  
11           and Dependency Act means that the probation was  
12           terminated satisfactorily and the judgment of  
13           conviction was vacated.

14           "Records" means all documentation in the  
15           possession or control of the Department, the court, or  
16           any agency regarding any report or arrest. Such  
17           documentation includes but shall not be limited to  
18           incident reports, police reports, fingerprints,  
19           booking photos, names, addresses, the records of the  
20           circuit clerk and official indexes. Such documentation  
21           does not include orders of protection.

22           "Seal" means to physically and electronically  
23           maintain the records, unless the records would  
24           otherwise be destroyed due to age, but to make the  
25           records unavailable without a court order, subject to  
26           the exceptions in Sections 12 and 13 of this Act. The

1           petitioner's name shall also be obliterated from the  
2           official index required to be kept by the circuit court  
3           clerk under Section 16 of the Clerks of Courts Act, but  
4           any index issued by the circuit court clerk before the  
5           entry of the order to seal shall not be affected.

6           "Sexual offense committed against a minor"  
7           includes but is not limited to the offenses of indecent  
8           solicitation of a child or criminal sexual abuse when  
9           the victim of such offense is under 18 years of age.

10           "Terminate" as it relates to a sentence includes  
11           either satisfactory or unsatisfactory termination of  
12           the sentence, unless otherwise specified in this  
13           Section.

14           (2) Effect of traffic offenses. For purposes of this  
15           Section, sentences of supervision or convictions for petty  
16           offenses, business offenses, or Class C misdemeanors under  
17           the Illinois Vehicle Code shall not affect a petitioner's  
18           eligibility to expunge or seal municipal ordinance,  
19           misdemeanor or felony records.

20           (3) Exclusions. Except as otherwise provided in clause  
21           (b) (5) and subsection (e) of this Section, the court shall  
22           not order the sealing or expungement of the arrest records  
23           and records of the circuit court clerk of any person  
24           granted supervision for or convicted of:

25           (i) any sexual offense committed against a minor;

26           or

1                   (ii) Section 11-501 of the Illinois Vehicle Code.

2           (b) Expungement.

3                   (1) A petitioner may petition the circuit court to  
4           expunge the records of his or her arrests when:

5                   (A) he or she has never been convicted of any  
6           municipal ordinance violation, misdemeanor or felony,  
7           except as set forth in clause (a) (2); and

8                   (B) each arrest sought to be expunged resulted in:

9                   (i) acquittal, dismissal, or the petitioner's  
10           release without charging; or

11                   (ii) a sentence of supervision and such  
12           supervision was successfully completed by the  
13           petitioner; or

14                   (iii) a sentence of qualified probation and  
15           such probation was successfully completed by the  
16           petitioner.

17           (2) Time frame for filing a petition to expunge.

18                   (A) When the arrest sought to be expunged resulted  
19           in an acquittal, dismissal, or the petitioner's  
20           release without charging, there is no waiting period to  
21           petition for the expungement of such records.

22                   (B) When the arrest sought to be expunged resulted  
23           in a sentence of supervision, successfully completed  
24           by the petitioner, the following time frames will  
25           apply:

26                   (i) Those records that resulted in sentence of

1           supervision under Section 3-707, 3-708, 3-710,  
2           5-401.3, or 11-503 of the Illinois Vehicle Code or  
3           a similar provision of a local ordinance, or under  
4           Section 12-3.2,12-15 or 16A-3 of the Criminal Code  
5           of 1961, shall not be eligible for expungement  
6           until 5 years have passed following the  
7           satisfactory termination of the supervision.

8           (ii) Those records that resulted in a sentence  
9           of supervision for any other offense shall not be  
10           eligible for expungement until 2 years have passed  
11           following the satisfactory termination of the  
12           supervision.

13           (C) When the arrest sought to be expunged resulted  
14           in a sentence of qualified probation, successfully  
15           completed by the petitioner, such records shall not be  
16           eligible for expungement until 5 years have passed  
17           following the satisfactory termination of the  
18           probation.

19           (3) Those records maintained by the Department for  
20           persons arrested prior to their 17th birthday shall be  
21           expunged as provided in Section 5-915 of the Juvenile Court  
22           Act of 1987.

23           (4) Whenever a person has been convicted of a crime or  
24           of the violation of a municipal ordinance, in the name of a  
25           person whose identity he has stolen or otherwise come into  
26           possession of, the aggrieved person from whom the identity

1       was stolen or otherwise obtained without authorization,  
2       upon learning of the person having been arrested using his  
3       identity, may, upon verified petition to the chief judge of  
4       the circuit wherein the arrest was made, have a court order  
5       entered nunc pro tunc by the chief judge to correct the  
6       arrest record, conviction record, if any, and all official  
7       records of the arresting authority, the Department, other  
8       criminal justice agencies, the prosecutor, and the trial  
9       court concerning such arrest, if any, by removing his name  
10       from all such records in connection with the arrest and  
11       conviction, if any, and by inserting in the records the  
12       name of the offender, if known or ascertainable, in lieu of  
13       the aggrieved's name. The records of the clerk of the  
14       circuit court clerk shall be sealed until further order of  
15       the court upon good cause shown and the name of the  
16       aggrieved person obliterated on the official index  
17       required to be kept by the circuit court clerk under  
18       Section 16 of the Clerks of Courts Act, but the order shall  
19       not affect any index issued by the circuit court clerk  
20       before the entry of the order. Nothing in this Section  
21       shall limit the Department of State Police or other  
22       criminal justice agencies or prosecutors from listing  
23       under an offender's name the false names he or she has  
24       used.

25       (5) Whenever a person has been convicted of criminal  
26       sexual assault, aggravated criminal sexual assault,

1 predatory criminal sexual assault of a child, criminal  
2 sexual abuse, or aggravated criminal sexual abuse, the  
3 victim of that offense may request that the State's  
4 Attorney of the county in which the conviction occurred  
5 file a verified petition with the presiding trial judge at  
6 the petitioner's trial to have a court order entered to  
7 seal the records of the clerk of the circuit court in  
8 connection with the proceedings of the trial court  
9 concerning that offense. However, the records of the  
10 arresting authority and the Department of State Police  
11 concerning the offense shall not be sealed. The court, upon  
12 good cause shown, shall make the records of the clerk of  
13 the circuit court in connection with the proceedings of the  
14 trial court concerning the offense available for public  
15 inspection.

16 (6) If a conviction has been set aside on direct review  
17 or on collateral attack and the court determines by clear  
18 and convincing evidence that the petitioner was factually  
19 innocent of the charge, the court shall enter an  
20 expungement order as provided in subsection (b) of Section  
21 5-5-4 of the Unified Code of Corrections.

22 (7) Nothing herein shall prevent the Department of  
23 State Police from maintaining all records of any person who  
24 is admitted to probation upon terms and conditions and who  
25 fulfills those terms and conditions pursuant to Section 10  
26 of the Cannabis Control Act, Section 410 of the Illinois

1       Controlled Substances Act, Section 70 of the  
2       Methamphetamine Control and Community Protection Act,  
3       Section 12-4.3 of the Criminal Code of 1961, Section 10-102  
4       of the Illinois Alcoholism and Other Drug Dependency Act,  
5       Section 40-10 of the Alcoholism and Other Drug Abuse and  
6       Dependency Act, or Section 10 of the Steroid Control Act.

7       (c) Sealing.

8           (1) Applicability. Notwithstanding any other provision  
9       of this Act to the contrary, and cumulative with any rights  
10       to expungement of criminal records, this subsection  
11       authorizes the sealing of criminal records of adults and of  
12       minors prosecuted as adults.

13           (2) Eligible records. The following records may be  
14       sealed:

15           (A) All arrests resulting in acquittal, dismissal,  
16       the petitioner's release without charging, or  
17       conviction when the conviction was reversed.

18           (B) Municipal ordinance violations, misdemeanors  
19       or felonies resulting in sentences of supervision  
20       successfully completed by the petitioner, with the  
21       exception of the following:

22           (i) Section 11-501 of the Illinois Vehicle  
23       Code or a similar provision of a local ordinance;

24           (ii) Article 11 of the Criminal Code of 1961 or  
25       a similar provision of a local ordinance, except  
26       Section 11-14 of the Criminal Code of 1961 or a

1 similar provision of a local ordinance;

2 (iii) Section 12-15, 12-30, or 26-5 of the  
3 Criminal Code of 1961 or a similar provision of a  
4 local ordinance;

5 (iv) "Crimes of violence" as defined in  
6 Section 2 of the Crime Victims Compensation Act or  
7 a similar provision of a local ordinance;

8 (v) Class A misdemeanors under the Humane Care  
9 for Animals Act; or

10 (vi) any offense or attempted offense that  
11 would subject a person to registration under the  
12 Sex Offender Registration Act.

13 (C) Municipal ordinance convictions, misdemeanor  
14 convictions, and misdemeanors or felonies of any class  
15 resulting in a sentence of qualified probation  
16 successfully completed by the petitioner, with the  
17 exception of the following:

18 (i) Section 11-501 of the Illinois Vehicle  
19 Code or a similar provision of a local ordinance;

20 (ii) Article 11 of the Criminal Code of 1961 or  
21 a similar provision of a local ordinance, except  
22 Section 11-14 of the Criminal Code of 1961 or a  
23 similar provision of a local ordinance;

24 (iii) Section 12-15, 12-30, or 26-5 of the  
25 Criminal Code of 1961 or a similar provision of a  
26 local ordinance;



1           (B) Records identified as eligible under clause  
2           (c) (2) (B) may be sealed 3 years after the termination  
3           of petitioner's last sentence, as defined in  
4           subsection (a), regardless of whether the petitioner  
5           has criminal records in any jurisdiction that are  
6           eligible for sealing under this subsection (c) but  
7           which have not been sealed, or criminal records in any  
8           jurisdiction that are subject to the waiting period as  
9           set forth in clause (c) (3) (C), or criminal records in  
10           any jurisdiction that are ineligible for sealing.

11           (C) Records identified as eligible under clauses  
12           (c) (2) (C) and (c) (2) (D) may be sealed 4 years after the  
13           termination of the petitioner's last sentence, as  
14           defined in subsection (a), regardless of whether the  
15           petitioner has criminal records in any jurisdiction  
16           that are eligible for sealing under this subsection (c)  
17           but which have not been sealed, or criminal records in  
18           any jurisdiction that are ineligible for sealing.

19           (4) Subsequent felony convictions. A person may not  
20           have subsequent felony conviction records sealed as  
21           provided in this subsection (c) if he or she is convicted  
22           of any felony offense after the date of the sealing of  
23           prior felony convictions as provided in this subsection  
24           (c).

25           (5) Notice of eligibility for sealing. Upon entry of a  
26           disposition for an eligible record under this subsection

1       (c), the petitioner shall be informed by the court of the  
2       right to have the records sealed and the procedures for the  
3       sealing of the records.

4       (d) Procedure. The following procedures apply to  
5       expungement under subsection (b) and sealing under subsection  
6       (c).

7           (1) Filing the petition. Upon becoming eligible to  
8           petition for the expungement or sealing of records under  
9           this Section, petitioner shall file a petition requesting  
10          the expungement or sealing of records with the clerk of the  
11          court where the charge or charges were brought. If charges  
12          were brought in multiple jurisdictions, a petition must be  
13          filed in each such jurisdiction. The petitioner shall pay  
14          the applicable fee, if not waived.

15          (2) Contents of petition. The petition shall be  
16          verified and shall contain the petitioner's name, date of  
17          birth, current address and, for each arrest sought to be  
18          sealed or expunged, the case number, the date of arrest,  
19          the identity of the arresting authority, and such other  
20          information as the court may require. During the pendency  
21          of the proceeding, the petitioner shall promptly notify the  
22          clerk of the court of any change of his or her address.

23          (3) Drug test. A person filing a petition to have his  
24          or her records sealed for Class 4 felony violations of  
25          Section 10 of the Cannabis Control Act, the Section 402 of  
26          the Illinois Controlled Substances Act, Section 60 of the

1       Methamphetamine Control and Community Protection Act, the  
2       Methamphetamine Precursor Control Act, or the Steroid  
3       Control Act must attach to the petition proof that the  
4       petitioner has passed a test taken within the previous 30  
5       days before the filing of the petition showing the absence  
6       within his or her body of all illegal substances as defined  
7       by the Illinois Controlled Substances Act and the Cannabis  
8       Control Act.

9           (4) Service of petition. The clerk of the court shall  
10       promptly serve a copy of the petition on the State's  
11       Attorney or prosecutor charged with the duty of prosecuting  
12       the offense, the Department of State Police, the arresting  
13       agency and the chief legal officer of the unit of local  
14       government effecting the arrest.

15           (5) Objections.

16           (A) Any party entitled to notice of the petition  
17       may file an objection to the petition. All objections  
18       shall be in writing and shall state with specificity  
19       the basis of the objection.

20           (B) The party objecting shall serve a copy of the  
21       objection on the petitioner, or when the petitioner is  
22       represented, the petitioner's attorney, and all  
23       parties entitled to notice of the petition by first  
24       class mail or hand delivery within 4 days of filing the  
25       objection.

26           (C) Objections to petitions to expunge must be

1           filed within 30 days of the date of service of the  
2           petition. Objections to petitions to seal must be filed  
3           within 90 days of the date of service of the petition.  
4           Any objection not filed within the time allowed shall  
5           be waived.

6           (6) Entry of order.

7           (A) The Chief Judge of the circuit wherein the  
8           charge was brought, any judge of that circuit  
9           designated by the Chief Judge, or in counties of less  
10           than 3,000,000 inhabitants, the presiding trial judge  
11           at the petitioner's trial, if any, shall rule on the  
12           petition or petitions to expunge or seal as set forth  
13           in this clause (d) (6).

14           (B) Unless the State's Attorney or prosecutor, the  
15           Department of State Police, the arresting agency, or  
16           the chief legal officer files an objection to the  
17           petition to expunge within 30 days from the date of  
18           service of the petition, the court shall enter an order  
19           granting or denying the petition.

20           (C) Unless the State's Attorney or prosecutor, the  
21           Department of State Police, the arresting agency, or  
22           the chief legal officer objects to a petition to seal  
23           within 90 days from the date of service of the  
24           petition, the court shall enter an order sealing the  
25           petitioner's records.

26           (7) Hearings. If an objection is filed, the court shall

1 set a date for a hearing and notify the petitioner and all  
2 parties entitled to notice of the petition, and shall hear  
3 evidence on whether the petition or petitions should or  
4 should not be granted, and shall make a determination on  
5 whether to expunge or seal the records based on the  
6 evidence presented at the hearing.

7 (8) Service of order. After entering an order to  
8 expunge or seal records, the court must provide copies of  
9 the order to the Department, in a form and manner  
10 prescribed by the Department, to the petitioner, to the  
11 State's Attorney or prosecutor charged with the duty of  
12 prosecuting the offense, to the arresting agency, to the  
13 chief legal officer of the unit of local government  
14 effecting the arrest, and to such other criminal justice  
15 agencies as may be ordered by the court.

16 (9) Effect of order.

17 (A) Upon entry of an order to expunge records  
18 pursuant to clause (b) (2) (A) or (b) (2) (B) (ii), or  
19 both:

20 (i) the records shall be expunged by the  
21 arresting agency, the Department, and any other  
22 agency as ordered by the court; and

23 (ii) the records of the clerk of the circuit  
24 court shall be impounded until further order of the  
25 court upon good cause shown and the name of the  
26 petitioner obliterated on the official index

1           required to be kept by the circuit court clerk  
2           under Section 16 of the Clerks of Courts Act, but  
3           the order shall not affect any index issued by the  
4           circuit court clerk before the entry of the order.

5           In response to an inquiry for expunged records, the  
6           court, the Department, or the agency receiving such  
7           inquiry shall reply "No records found".

8           (B) Upon entry of an order to expunge records  
9           pursuant to clause (b) (2) (B) (i) or (b) (2) (C), or both:

10           (i) the records shall be expunged by the  
11           arresting agency and any other agency as ordered by  
12           the court; and

13           (ii) the records of the clerk of the circuit  
14           court shall be impounded until further order of the  
15           court upon good cause shown and the name of the  
16           petitioner obliterated on the official index  
17           required to be kept by the circuit court clerk  
18           under Section 16 of the Clerks of Courts Act, but  
19           the order shall not affect any index issued by the  
20           circuit court clerk before the entry of the order;  
21           and

22           (iii) the records shall be impounded by the  
23           Department.

24           Records impounded by the Department may be  
25           disseminated by the Department only to the arresting  
26           authority, the State's Attorney, and the court upon a

1           later arrest for the same or a similar offense or for  
2           the purpose of sentencing for any subsequent felony,  
3           and to the Department of Corrections upon conviction  
4           for any offense.

5           In response to an inquiry for such records from  
6           anyone not authorized by law to access such records the  
7           court, the Department, or the agency receiving such  
8           inquiry shall reply "No records found".

9           (C) Upon entry of an order to seal records under  
10           subsection (c), the arresting agency, any other agency  
11           as ordered by the court, the Department, and the court  
12           shall seal the records, as defined in subsection (a).  
13           In response to an inquiry for such records from anyone  
14           not authorized by law to access such records the court,  
15           the Department, or the agency receiving such inquiry  
16           shall reply "No records found".

17           (10) Fees. Notwithstanding any provision of the Clerks  
18           of Courts Act to the contrary, and subject to the approval  
19           of the county board, the clerk may charge a fee equivalent  
20           to the cost associated with the sealing of records by the  
21           clerk and the Department of State Police. The clerk shall  
22           forward the Department of State Police portion of the fee  
23           to the Department and it shall be deposited into the State  
24           Police Services Fund.

25           (11) Appeal. No court order issued under the  
26           expungement or sealing provisions of this Section shall

1 become final for purposes of appeal until 30 days after  
2 service of the order on the petitioner and all parties  
3 entitled to notice of the petition.

4 (12) Motion to Vacate, Modify, or Reconsider. The  
5 petitioner or any party entitled to notice may file a  
6 motion to vacate, modify, or reconsider the order granting  
7 or denying the petition or petitions to expunge or seal  
8 within 30 days of service of the order.

9 (e) Expungement after pardon. Whenever a person who has  
10 been convicted of an offense is granted a pardon by the  
11 Governor which specifically authorizes expungement, he or she  
12 may, upon verified petition to the chief judge of the circuit  
13 where the he or she had been convicted, any judge of the  
14 circuit designated by the Chief Judge, or in counties of less  
15 than 3,000,000 inhabitants, the presiding trial judge at his or  
16 her trial, have an order entered expunging the record of the  
17 arrest or arrests from the official records of the arresting  
18 authority and ordering that the records of the clerk of the  
19 circuit court and the Department be impounded until further  
20 order of the court upon good cause shown or as otherwise  
21 provided in this subsection (e), and the name of the petitioner  
22 obliterated from the official index requested to be kept by the  
23 circuit court clerk under Section 16 of the Clerks of Courts  
24 Act in connection with the arrest and sentence for the offense  
25 or offenses for which he or she had been pardoned but the order  
26 shall not affect any index issued by the circuit court clerk

1 before the entry of the order. All records impounded by the  
2 Department pursuant to this subsection (e) may be disseminated  
3 by the Department only to the arresting authority, the State's  
4 Attorney, and the court upon a later arrest for the same or  
5 similar offense or for the purpose of sentencing for any  
6 subsequent felony. Upon conviction for any subsequent offense,  
7 the Department of Corrections shall have access to all  
8 impounded records of the Department pertaining to that  
9 individual. Upon entry of the order of expungement, the clerk  
10 of the circuit court shall promptly mail a copy of the order to  
11 the person who was pardoned.

12 (f) Subject to available funding, the Illinois Department  
13 of Corrections shall conduct a study of the impact of sealing,  
14 especially on employment and recidivism rates, utilizing a  
15 random sample of those who apply for the sealing of their  
16 criminal records under Public Act 93-211, in accordance to  
17 rules adopted by the Department. At the request of the Illinois  
18 Department of Corrections, records of the Illinois Department  
19 of Employment Security shall be utilized as appropriate to  
20 assist in the study. The study shall not disclose any data in a  
21 manner that would allow the identification of any particular  
22 individual or employing unit. The study shall be made available  
23 to the General Assembly no later than September 1, 2008."